

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

HI JI,
LI MINJUN,
TU LAN,
ZHU FENG,

also known as “Johnny Zhu,”
KUANG ZEBIN,
also known as “Vincent Kuang,”
MICHAEL MCMAHON,
Zhai YONGQIANG,
ZHENG CONGYING and
ZHU YONG,

also known as “Jason Zhu,

Defendants.

Case No. 1:21-cr-00265 (PKC) (S-1)

Filed Electronically

**CERTIFICATION OF
LAWRENCE S. LUSTBERG
IN SUPPORT OF
MOTION FOR DISCOVERY AND AN
EVIDENTIARY HEARING
REGARDING PROSECUTORIAL
MISCONDUCT**

I, **LAWRENCE S. LUSTBERG**, hereby certify as follows:

1. I am an attorney-at-law, admitted to the bars of the States of New Jersey and New York and, among a number of other Federal Courts, to the bar of the United States District Court for the Eastern District of New York. I am also a Director with Gibbons P.C., counsel for Defendant Michael McMahon in the above-captioned matter.

2. I submit this Certification based upon my personal knowledge and review of the attached relevant documents and facts detailed herein, and in support of Mr. McMahon’s Motion for Discovery and an Evidentiary Hearing Regarding Prosecutorial Misconduct.

3. Attached hereto as Exhibit 1 is a true and correct copy of an e-mail received by Mr. McMahon on October 5, 2016 from Emily Hsu of Transperfect Language Services, providing, in

pertinent part, that John Doe #1: “is a gentleman who owned [sic] a lot of money from Mr. Jason Zhu. Instead of repaying the money he owned, [sic] [John Doe #1] chose to run away, and that’s why Mr. Zhu needs to find where does [John Doe #1] live and other relate information.” Redactions have been implemented to Exhibit 1 to protect the identity of the individual referred to in the Superseding Indictment as John Doe #1, as well as PayPal account information.

4. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail received by Mr. McMahon on November 13, 2016 from Eric Yan (Hu Ji), providing, in pertinent part: “I have already back [sic] to China and reported all we found to my boss of the company.” Redactions have been implemented to Exhibit 2 to protect the identity of the individual referred to in the Superseding Indictment as John Doe #1.

5. Attached hereto as Exhibit 3 is a true and correct copy of a text message received by Mr. McMahon on or about April 6, 2017 from Johnny Zhu (Zhu Feng) that provides, in pertinent part: “Nice work I’m sending to the company.”

6. Attached hereto as Exhibit 4 is a true and correct copy of a text message received by Mr. McMahon on April 8, 2017 from Johnny Zhu (Zhu Feng) that provides, in pertinent part: “Ok mc I spoke with my company last nite they want u to monitor on Monday but with one person.”

7. Following his arrest, on or about February 22, 2021, Mr. McMahon and his counsel made a detailed power point presentation to the Government, demonstrating his innocence and showing through documents such as emails and text messages that Mr. McMahon had no idea that he was performing investigative services on behalf of the People’s Republic of China, but rather, believed based upon what he was told by those who retained him, that he was performing

investigative services in connection with an individual who embezzled assets from a private Chinese company. The power point is available to the Court upon request.

8. Mr. McMahon maintained his file in connection with the investigation of John Doe #1, including, but not limited to, text messages, emails, invoices, and investigative reports. Mr. McMahon shared the pertinent portions of his file with the Government at the February 22, 2021 proffer, and formally produced the entirety of his file to the Government, at its request, on March 16, 2022.

9. In the course of our communications with the Government, as well as in at least one other phone call, and perhaps more, I offered, on behalf of Mr. McMahon, to provide any information that the Government might need in order to prosecute this matter, and to otherwise cooperate with the Government in any way it wished. The Government has not accepted this offer, or at least has not done so without Mr. McMahon admitting wrongdoing, which he cannot do without perjuring himself.

10. I represented the defendant Paul Bergrin in the matter captioned *United States v. Paul Bergrin*, No. 2:09-cr-000369 (D.N.J.). Originally, I was retained to represent Mr. Bergrin, and entered my appearance in that matter on August 26, 2009, but when he decided to proceed *pro se*, I was appointed on September 16, 2011 to represent him under the Criminal Justice Act, 18 U.S.C. § 3006A, as standby counsel, which I and others from my Firm did for both his first and second trials. As well, I represented him on his first appeal, *United States v. Bergrin*, No. 10-2204, and entered my appearance in connection therewith on July 19, 2010 and was appointed on December 7, 2011, December 27, 2011, and September 20, 2013, respectively, to represent him on the last three of his appeals, *United States v. Bergrin*, Nos. 11-4300, 11-4552, 13-3934, as well as on August 28, 2018, in connection with his motion for a new trial based upon newly discovered

evidence pursuant to Federal Rule of Criminal Procedure 33 and, most recently, on September 10, 2020 in connection with his motion to vacate conviction and sentence pursuant to 28 U.S.C. § 2255, originally filed *pro se*. With respect to his Rule 33 motion, one of the investigators who worked on his case—and ultimately the chief defense investigator on the matter—was Michael McMahon, the defendant herein, whose fees were approved and paid by the Court under the Criminal Justice Act.

11. Mr. Bergrin has, for many years now, been held at the so-called “super-max” ADX prison in Florence, Colorado under Special Administrative Measures (SAMs) that allow him virtually no communication with the outside world and in conditions that amount to permanent and indefinite solitary confinement; the Government has taken steps to assure that those SAMs are renewed year after year.

All of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: August 8, 2022
Newark, New Jersey

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